



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 216 and 300

[Docket No. 220322-0076]

RIN 0648-BK88

#### International Fisheries; Pacific Tuna Fisheries; Purse Seine Observer Exemptions in the Eastern Pacific Ocean

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations under the authority of the Marine Mammal Protection Act (MMPA) and the Tuna Conventions Act (TCA) of 1950, as amended, to allow NMFS to issue temporary exemptions from purse seine observer requirements in the eastern Pacific Ocean (EPO) in accordance with procedures adopted by Parties to the Agreement on the International Dolphin Conservation Program (AIDCP) and members of the Inter-American Tropical Tuna Commission (IATTC). This final rule is necessary for the continuity of fishing activities for large U.S. purse seine vessels and for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** Effective [*Insert date of publication in the Federal Register*].

**ADDRESSES:** Copies of supporting documents that were prepared for this final rule, including the Regulatory Impact Review, are available via the Federal e-Rulemaking Portal: [www.regulations.gov](https://www.regulations.gov), docket NOAA-NMFS-2021-0111, or contact William Stahnke, NMFS WCR, Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802, or [WCR.HMS@noaa.gov](mailto:WCR.HMS@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** William Stahnke, NMFS WCR, at (562) 980-4088.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 4, 2022, NMFS published a proposed rule in the **Federal Register** (87 FR 6474) to revise regulations at 50 CFR part 216, subpart C and 50 CFR part 300, subpart C, to allow NMFS to issue temporary exemptions from purse seine observer requirements in the eastern Pacific Ocean (EPO) in accordance with procedures adopted by Parties to the Agreement on the International Dolphin Conservation Program (AIDCP) and members of the Inter-American Tropical Tuna Commission (IATTC). The 30-day public comment period for the proposed rule closed on March 7, 2022.

The final rule is implemented under the authority of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), and the Tuna Conventions Act (16 U.S.C. 951 *et seq.*). This final rule applies to U.S. large purse seine vessels (*i.e.*, those greater than 400 short ton carrying capacity) fishing for tuna in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the eastern Pacific Ocean (EPO) within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude.

**Background on the AIDCP and IATTC**

The AIDCP has been ratified or acceded by 14 countries, including the United States, and is applied provisionally by another two. Among the objectives of the AIDCP are to reduce dolphin mortalities and ensure the long-term sustainability of the tuna stocks within the AIDCP Agreement Area.<sup>1</sup> The full text of the AIDCP is available online at: [https://www.iattc.org/PDFFiles/AIDCP/\\_English/AIDCP.pdf](https://www.iattc.org/PDFFiles/AIDCP/_English/AIDCP.pdf).

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<sup>1</sup> Defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude.

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission (1949 Convention). The 1949 Convention was updated by the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The full text of the Antigua Convention is available online at: [https://www.iattc.org/PDFFiles/IATTC-Instruments/\\_English/IATTC\\_Antigua\\_Convention%20Jun%202003.pdf](https://www.iattc.org/PDFFiles/IATTC-Instruments/_English/IATTC_Antigua_Convention%20Jun%202003.pdf).

The IATTC consists of 21 member nations and five cooperating non-member nations. The IATTC facilitates scientific research, as well as the conservation and management, of tuna and tuna-like species in the IATTC Convention Area.<sup>2</sup> The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, sharks, and billfish stocks in the IATTC Convention Area to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

### **International Obligations of the United States Under the Antigua Convention and AIDCP**

As a Party to the Antigua Convention and AIDCP and a Member of the IATTC, the United States is legally bound to implement decisions of the IATTC under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*) and decisions of the Parties to the AIDCP under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*). The Tuna Conventions Act directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States' obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The

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<sup>2</sup> Defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude.

authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS. The MMPA directs the Secretary of Commerce to issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program. As with the TCA, the authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS.

### **AIDCP and IATTC Observer Program and U.S. Observer Requirements**

U.S. large purse seine vessels (*i.e.*, those greater than 400 short ton carrying capacity) fishing for tuna in the EPO are subject to 100 percent observer coverage obligations under Annex II, paragraph 2 of the AIDCP and IATTC Resolution C-09-04, *Resolution on the International Dolphin Conservation Program*. The United States implemented this requirement for 100 percent observer coverage into domestic regulation at 50 CFR 216.24(e)(1), which requires vessel permit holders to allow an authorized observer to accompany the vessel on all fishing trips in the eastern tropical Pacific Ocean (ETP) for the purpose of collecting information pertaining to research and observing operations and prohibits vessels that fail to carry an observer in accordance with these requirements from engaging in fishing operations. The United States does not have its own national observer program for the large tuna purse seine fishery and relies solely on the AIDCP/IATTC program to place observers on U.S. large purse seine vessels. The observers are typically foreign nationals that board U.S. vessels at ports throughout Central and South America, as well as American Samoa.

### **AIDCP and IATTC Agreement for Exemptions and NMFS Emergency Observer Exemption Rule**

On April 16, 2020, the IATTC issued a memorandum (Ref.: 0173-420)<sup>3</sup> indicating that the AIDCP Parties and the IATTC Members adopted procedures to

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<sup>3</sup> Copies of IATTC Memo #0173-420 as well as the original NMFS exemption procedures can be found in the docket for this rulemaking.

provide for the temporary exemption, on a case-by-case basis, from purse seine observer requirements in the EPO for each vessel and trip where it is not possible to place an observer due to operational and logistical constraints arising from actions taken by governments or organizations to safeguard health in response to the COVID-19 Pandemic. Under these exemption procedures, owners and operators of vessels must continue requesting the placement of observers in accordance with pre-existing procedures. An AIDCP/IATTC exemption is considered granted when the IATTC Director, or the head of the field office and the national observer program office of AIDCP Parties, certify the unavailability of an observer for the vessel. These procedures were set to expire June 1, 2020, but the AIDCP/IATTC issued several subsequent memoranda extending the procedures, most recently until March 31, 2022 (0564-420; December 16, 2021), and they are expected to be extended further. The current AIDCP/IATTC exemption procedures are discussed in greater detail in the next section of this preamble.

In addition to the AIDCP/IATTC procedures, NMFS needed authority to provide exemptions from domestic regulations requiring observer coverage. On March 27, 2020, NMFS published a temporary rule for an emergency action in response to the COVID-19 Pandemic (85 FR 17285) that provides the authority to waive observer coverage requirements implemented under certain statutes, including the MMPA and TCA (“NMFS Emergency Rule”). That NMFS Emergency Rule permits NMFS to waive observer coverage requirements if:

- (1) Placing an observer conflicts with travel restrictions or other requirements addressing COVID-19 related concerns issued by local, state, or national governments, or the private companies that deploy observers pursuant to NMFS regulations; or
- (2) No qualified observer(s) are available for placement due to health, safety, or training issues related to COVID-19.

That temporary NMFS Emergency Rule was extended and is currently in effect until March 26, 2022, or until the Secretary of Health and Human Services determines that the COVID-19 Pandemic is no longer a public health emergency, whichever is earlier (March 29, 2021; 86 FR 16307). Pursuant to the NMFS Emergency Rule, and in accordance with exemption procedures adopted by the AIDCP/IATTC, NMFS West Coast Region (WCR) established a process, subject to revocation or extension as circumstances warrant, for issuing temporary written exemptions on an individual, case-by-case basis to the U.S. regulatory requirements for observer coverage of large U.S. tuna purse seine vessels fishing in the EPO. This process, which NMFS is maintaining under this rule, is discussed in greater detail in the next section of this preamble.

#### **Amendments to Regulations at 50 CFR 216.24(e) to Allow for Exemptions from Purse Seine Observer Requirements in the EPO**

Though difficult to predict, NMFS expects travel restrictions will likely continue in American Samoa and other port States where observers are placed on purse seine vessels beyond March 2022. As noted, the AIDCP/IATTC exemptions procedures have been extended until March 31, 2022, and are expected to be extended further. However, the temporary NMFS Emergency Rule that provides the United States domestic authority to waive observer coverage for large EPO purse seine vessels will expire on March 26, 2022. Without this final rule, NMFS would no longer have the authority to issue exemptions from observer requirements to large purse seine vessels fishing in the EPO upon expiration of the NMFS Emergency Rule and the United States would likely be the only AIDCP Party and IATTC Member unable to issue these exemptions to its purse seine vessels. Therefore, this rule is necessary to allow NMFS to continue issuing temporary exemptions from the observer requirements beyond the NMFS Emergency Rule expiration date in March 2022.

These temporary exemptions are in accordance with continuing AIDCP/IATTC exemption procedures and, potentially, in accordance with exemption procedures adopted in the future because the AIDCP contains an unqualified requirement for 100 percent observer coverage. NMFS anticipates that the AIDCP/IATTC will only adopt exemption procedures in the future under emergency circumstances similar to the COVID-19 pandemic and that those procedures would be similarly limited to single fishing trips for which it would be impossible to place an observer on a vessel.

This rule finalizes an amendment to § 216.24(e)(1) to add a provision that will allow NMFS to issue temporary exemptions from purse seine observer requirements, on a case-by-case basis, in accordance with procedures adopted by the Parties to the AIDCP and Members of the IATTC. These temporary exemptions are available to U.S. large purse seine vessels that are used to catch tropical tuna in the IATTC Convention Area and will grant a single vessel an exemption from the requirement to carry an observer during a single fishing trip, provided the vessel complies with AIDCP/IATTC exemption procedures and with other applicable regulations and requirements. Although the exemption provision will not expire, it is only applicable for the duration that AIDCP and IATTC observer exemption procedures are effective. In other words, this provision only gives NMFS the authority to grant an exemption: (1) if the Parties to the AIDCP and Members of the IATTC have collectively agreed to adopt procedures for exempting observer coverage requirements under certain emergency circumstances; and (2) in accordance with the specific procedures adopted by AIDCP/IATTC for granting those exemptions.

NMFS will notify the affected fleet via email when the current AIDCP/IATTC emergency exemption procedures are no longer in effect. NMFS will also notify the affected fleet via email and the public by publication of a notice in the **Federal Register** if new exemption procedures are adopted by the Parties to the AIDCP and Members of

the IATTC. New exemptions will not be issued by NMFS when AIDCP/IATTC exemption procedures are not in effect and exemptions issued by NMFS while AIDCP/IATTC exemption procedures are in effect will only be effective for as long as the AIDCP/IATTC procedures remain in effect.

*Process for Obtaining an Observer Exemption from the IATTC*

As previously noted, the AIDCP Parties and the IATTC Members adopted procedures for the temporary exemption, on a case-by-case basis, of the requirement to carry an observer for trips where it is not possible to place an observer on a vessel. The process for a vessel to be granted an exemption from the IATTC is outlined below:

- Vessel owners/operators planning a fishing trip in the EPO are to contact the IATTC Director and Observer Coordinator to request an observer.
- If the IATTC Director, or the head of the field office and the national program office, certifies, in coordination with Flag State Authorities, that it is not possible to place an observer on the vessel, then an exemption from AIDCP observer requirements will be considered granted for the fishing trip.

*Process for Obtaining an Observer Exemption from NMFS*

In addition to obtaining certification from the IATTC Director that placement of an observer is not possible, U.S. large purse seine vessels must also obtain from NMFS WCR an individual exemption from domestic regulatory observer coverage requirements. As discussed previously, NMFS has been issuing those exemptions under the authority of the NMFS Emergency Rule; however, this rule provides NMFS the authority to continue issuing such exemptions while AIDCP/IATTC exemption procedures are in effect. NMFS will continue using the existing process for a U.S. vessel to obtain an exemption from domestic regulations, as outlined below:

- Once NMFS West Coast Region receives certification from the IATTC or the vessel owner/operator that an exemption has been granted, NMFS will confirm



that the vessel owner/operator meets the criteria set forth in the AIDCP/IATTC exemption procedures.

- If the criteria are met, NMFS will issue the permit holder a letter documenting that the requirement to carry an observer has been exempted for that vessel trip.
- A NMFS observer exemption may be requested from the NMFS West Coast Region, Sustainable Fisheries Division, Highly Migratory Species (HMS) Branch, via *WCR.HMS@noaa.gov*.

NMFS anticipates working in coordination with the IATTC and being able to provide individual vessel exemptions without significant delay to U.S. large purse seine vessels. Any changes to these procedures will be notified by email directly and/or via relevant email distribution lists to vessel owners, operators, and permit holders.

#### *Dolphin-Safe Requirements*

It should be noted that although these regulations will allow NMFS to waive the regulatory requirements in § 216.24(e)(1) to carry an observer, tuna caught in the ETP on a trip without an AIDCP-approved observer will be ineligible for a United States dolphin-safe label or an AIDCP Dolphin-Safe Tuna Certificate. With respect to the U.S. dolphin-safe label, any tuna harvested by large purse seine vessels fishing in the ETP is subject to U.S. dolphin-safe labeling requirements at 50 CFR part 216, subpart H, and also subject to the authority of the International Dolphin Conservation Program Act (ICDPA; 16 U.S.C. 1417). Without an AIDCP-approved observer on a fishing trip (even with an observer exemption), the Tuna Tracking Forms (TTFs) cannot be completed by an observer for that trip and, thus, the tuna would be ineligible for a dolphin-safe label. TTFs are necessary for the issuance of the U.S.-required IDCP-member nation certification to accompany the NOAA Form 370 for tuna harvested by large purse seine vessels in the ETP. However, such tuna harvested in the ETP without an observer may still be legally

sold in the United States as non-dolphin-safe, provided it was harvested in accordance with other relevant requirements.

With respect to the AIDCP Dolphin-Safe Tuna Certificate, it should also be noted that the AIDCP Parties did not waive the requirement for the observer's role in verifying the dolphin-safe status of the catches under the AIDCP Dolphin-Safe Tuna Certification Program. Therefore, any trip by a vessel of an AIDCP Party that is made without an observer would not have valid TTFs and, thus, no valid AIDCP Dolphin-Safe Tuna Certificate can be issued by a Party for any catches made on that particular fishing trip.

### **Amendments to 50 CFR 300.24 and 300.25 to Incorporate Existing Purse Seine Observer Requirements into the Regulations that Govern Eastern Pacific Tuna Fisheries**

As noted earlier, the regulatory requirement for large purse seine vessels to carry observers during fishing operations in the EPO are found in 50 CFR part 216, which contains regulations governing the taking and importing of marine mammals. This rule incorporates that requirement into 50 CFR part 300, subpart C, which contains regulations governing eastern Pacific tuna fisheries. Specifically, this rule finalizes the addition of a provision in § 300.25, *Fisheries Management*, that re-states, and cross-references to, the observer coverage requirement in § 216.24(e)(1). This provision, found at § 300.25(d), clarifies that the requirements in § 216.24(e)(1) apply within the IATTC Convention Area. A prohibition against operating a large purse seine vessel in the IATTC Convention Area in contravention of applicable observer requirements is also now included in § 300.24(n).

### **Public Comments and Responses**

NMFS received six public comments on the proposed rule during the public comment period which ended on March 7, 2022. One comment from the American Tunaboat Association expressed support for the proposed rule and the maintenance of the

ability for the U.S. to issue exemptions to the observer requirements, separately from the NMFS Emergency Rule, and in accordance with adopted AIDCP/IATTC exemption procedures. Five comments were in opposition, four submitted by an individual commenter (a student at the City University of New York School of Law) and one submitted by Earthjustice, an environmental non-governmental organization. Issues expressed in these comments pertained to the negative impacts of gaps in observer data and using electronic monitoring as a means to supplement gaps, concern with exemption procedures lasting indefinitely, concern that the exemption procedures would ultimately lead to overfishing and illegal, unreported and unregulated (IUU) fishing, and concerns with dolphin-safe status of the catch. A summary of the comments and NMFS' responses can be found below.

*Comment 1: Observer data gaps*

Concerns regarding gaps in observer data were expressed in comments submitted by Earthjustice and the individual commenter. Commenters highlighted that low observer coverage on vessels causes large-scale logistical and environmental issues and that gaps in observer data from a lack of observers' reporting will disrupt important scientific research and policymaking, essential for fisheries management and compliance with government standards. Commenters mentioned that because U.S. purse seine vessels do not land their catch on the U.S. West Coast, and NMFS does not have ready access to cannery receipts to verify landings, observer data is needed to corroborate self-reporting in logbooks. Commenters also referenced IATTC recommendations for the necessity to increase observer coverage in the longline fleet as justification for not allowing decreases in observer coverage due to observer exemptions in the purse seine fleet.

*Response:*

NMFS shares concerns with the commenters that lack of observer data in IATTC purse seine fisheries is a concern for reliable and accurate data collection. The IATTC

and AIDCP require 100 percent observer coverage on large purse seine vessels fishing in the IATTC Convention Area. NMFS would like to highlight that IATTC/AIDCP observer exemptions adopted since April 2020 are provided on a case-by-case basis and in 2020 and 2021 about 94 percent of all IATTC large purse seine trips have been observed. NMFS would also like to highlight that, per the AIDCP/IATTC memorandum implementing and extending exemption procedures, as well as existing regulations at 50 CFR 300.22, vessel captains are required to collect, record, and report data and information for each trip on tuna catches and bycatch of other species, by gear, fishing area and type of set, to be submitted to the IATTC at the end of each trip. Additionally, the resolution for tropical tuna adopted by the IATTC in October 2021 (Resolution C-21-04) included requirements for purse seine vessels to provide cannery data to the IATTC on a near real-time basis, which will also provide more data to the IATTC on all vessel trips, including those without observers.

After the current AIDCP/IATTC exemption procedures expire, NMFS would only have the ability to grant observer exemptions if the AIDCP/IATTC once again adopts emergency observer exemption procedures to address global or regional health, safety, and security concerns in association with some other international emergency or crises. The U.S., as a member of those organizations, will have a role in shaping any exemption procedures prior to adoption, and is able to block consensus on agreement if needed. After adoption of AIDCP/IATTC exemption procedures, NMFS will issue exemptions from the domestic observer requirement on a case-by-case basis for a single fishing trip in accordance with AIDCP/IATTC exemption procedures in effect at the time.

With respect to comments on longline observer coverage in IATTC fisheries, the IATTC did not adopt exemption procedures for longline vessels, and the existing 5 percent observer coverage on longline vessels remains in place per Resolution C-19-08. However, NMFS agrees with the commenter and recommendations from the IATTC

scientific staff that 20 percent observer coverage on longline vessels would provide more complete data. The United States typically has about 20 percent observer coverage on its large longline vessels. In 2020, that figure decreased by roughly 4 percent, but is expected to rise again.

*Comment 2: The action will lead to IUU fishing*

An individual commenter asserted that the proposed regulation will allow fisheries to bypass the regulatory requirements to carry an onboard observer for EPO trips, and that the resulting lack of government oversight of commercial fishing will most likely lead to IUU practices to the detriment of the fishing industry, its consumers, and the environment.

*Response:*

As described under response to comment 1, NMFS agrees that lack of observer coverage is a concern for accurate data. Given that IUU activities are secretive in nature, it is difficult to predict or know when they may occur. NMFS reminds the commenter that observer exemptions are temporary (for a single vessel during a single fishing trip) and aimed to address the impacts of a global pandemic or other international emergencies or crisis. In the short term, the observer coverage rate is expected to rise as pandemic-related travel restrictions are lifted and more observers are available for placement, until ultimately observer exemptions are no longer needed. Please refer to the response to comment 1 above for further information.

*Comment 3: The action will lead to overfishing*

Earthjustice and an individual commenter suggested that the proposed regulation will make the effective prevention of overfishing more difficult and potentially impossible, which will have negative environmental impacts and result in decreased fishing opportunities.

*Response:*

As noted in an earlier response, the IATTC recently adopted a new tropical tuna management resolution for the years 2022-2024 (Resolution C-21-04), which comes with a suite of new and robust measures to prevent overfishing from occurring. As a member of the IATTC, the United States is obligated to implement and comply with these measures. The IATTC scientific staff will continue to provide stock status indicators for bigeye, yellowfin, and skipjack tunas on an annual basis to the Scientific Advisory Committee to monitor any changes in the EPO tuna stocks. Based on the 2020 assessments conducted by the IATTC Scientific Staff, NMFS determined that yellowfin and bigeye tuna stocks in the EPO, which the affected vessels target, are not subject to overfishing or overfished, nor are they approaching an overfished condition. In addition, the next stock assessments for bigeye and yellowfin tuna are expected in 2024, which will provide an update on the stock status and reveal the effect of additional management measures adopted by the IATTC in 2021.

*Comment 4: COVID-19 not ending leads to exemptions not ending*

An individual commenter asserted that due to progress in management of the pandemic, an extension of the emergency exemption to observer requirements is no longer justified. The commenter claimed that, because there is no indication that the Secretary of HHS will ever declare the end of COVID-19, NMFS should not wait to reimplement observer requirements that existed before the issuance of the Emergency Rule, and should instead strengthen them.

*Response:*

NMFS understands that pandemic circumstances within the United States are different from those of other IATTC member countries. NMFS reminds the commenter, however, that the United States does not have its own national observer program for the large purse seine vessel tuna fishery in the EPO and therefore relies solely on the AIDCP/IATTC program to place observers on U.S. large purse seine vessels. The

observers are typically foreign nationals that board U.S. vessels at ports throughout Central and South America, as well as American Samoa. Therefore, travel restrictions that constrain the ability of observers to enter ports, such as in American Samoa, as well as other pandemic-related constraints that impact the IATTC's ability to place observers on vessels, are outside of the control of the United States.

These regulations are separate from the broader NMFS Emergency Rule, which applies to both domestic and international fisheries and expires March 26, 2022, or when the Secretary of Health and Human Services determines that the COVID-19 Pandemic is no longer a public health emergency, whichever is earlier. These regulations apply only to the international large U.S. purse seine fleet that fishes for tuna in the EPO and, although they do not have a specific expiration date, they are only applicable while AIDCP/IATTC exemption procedures are in effect. NMFS expects the existing AIDCP/IATTC exemption procedures will be extended beyond their current expiration date to address ongoing travel restrictions and other pandemic-related health and safety concerns impacting the IATTC's ability to place observers on purse seine vessels in the EPO.

*Comment 5: Electronic Monitoring (EM) should be used to supplement gaps in observer data*

Earthjustice asserted that if NMFS continues to extend the observer waiver, the agency must require alternative methods for data collection and monitoring that can fulfill the functions of observers and provide a check on the industry. Earthjustice recommended, at a minimum, that NMFS require EM on all purse seine trips without an observer. They encouraged NMFS to consider EM as a necessary tool to supplement observers, as well to implement EM in conjunction with regulations (such as proper use and handling of EM equipment on board and prohibiting tampering) which make EM more effective.

*Response:*

NMFS is supportive of progress towards developing EM for IATTC purse seine and longline fisheries. The IATTC held its first EM workshop in 2021 and developed a 4-year workplan to progress the implementation of EM in IATTC fisheries. Because there are various considerations for EM such as compliance, data confidentiality, costs, best practices, *etc.*, a series of discussions is necessary before EM can be implemented in a consistent and successful manner. NMFS has been working with the Hawaii longline fleet on the use of EM concurrently with observers. The IATTC also sponsored a pilot study of EM of the activities on purse seine vessels and is currently in the process of conducting similar work on several longline vessels. For fishing trips without observers, paragraph 5 of the AIDCP/IATTC memorandum implementing and extending exemption procedures calls for continued reporting of EM data to the IATTC on board purse seine vessels equipped with those systems.

*Comment 6: Dolphin-safe concerns*

An individual commenter expressed concerns regarding the dolphin-safe status of the catch, highlighting that the harvested tuna will not be eligible for dolphin-safe labels, yet the proposed rule will allow for it to still be legally sold. The commenter also expressed concern that most of the tuna in supermarket shelves would be non-dolphin-safe, and asserted that the action would be putting dolphins' lives at risk and allow for overfishing in violation of the Sustainable Fisheries Act.

*Response:*

Please refer to the responses to comments 1 and 2 above for information on the observer coverage rates on purse seine vessels during the pandemic, which remain high. NMFS agrees with the commenter that tuna harvested in the International Dolphin Conservation Program (IDCP) Agreement Area by a large purse seine vessel, without an IDCP-approved observer on board during the entire fishing trip, will be ineligible for a



dolphin-safe label in the U.S. marketplace. NMFS disagrees with the commenter's assertion that this rule knowingly, willingly, and intentionally allows for dolphins' lives to be put at risk. The United States was an original signatory Party to the IDCP Agreement in 1998. The United States still strongly supports the Agreement's objectives to progressively reduce incidental dolphin mortalities in the tuna purse-seine fishery in the Agreement Area, with the goal of eliminating dolphin mortality in this fishery, and to ensure the long-term sustainability of the tuna stocks in the Agreement Area.

### **Changes From the Proposed Rule**

This final rule contains no changes from the proposed rule.

### **Classification**

The NMFS Assistant Administrator has determined that this rule is consistent with the Marine Mammal Protection Act, Tuna Conventions Act of 1950, and other applicable laws.

This rule has been determined to be not significant for purposes of Executive Order 12866.

Under section 553(d)(3) of the Administrative Procedure Act, an agency must delay the effective date of regulations for 30 days after publication, unless the agency finds good cause to make the regulations effective sooner. The Assistant Administrator for Fisheries determined that good cause exists to make this rule effective immediately upon publication in the **Federal Register** without providing a 30-day delay after publication. NMFS is obligated to implement these measures immediately to avoid a lapse in our ability to issue purse seine observer exemptions in the EPO, which constitutes good cause. Not making the rule effective immediately would result in NMFS being unable to issue exemptions to U.S. vessels in cases where no observer is available, thereby harming those vessels by preventing them from legally fishing. In addition, because this rule will not change the emergency observer exemption process currently in

place, a delay in the effective date – the purpose of which is to give affected persons a reasonable amount of time to comply with the rule or take any other action that issuance of the rule may prompt – is contrary to the public interest.

There are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act (PRA), and the existing collection-of-information requirements still apply under Office of Management and Budget (OMB) Control Numbers 0648-0148 (West Coast Region Pacific Tuna Fisheries Logbook, Fish Aggregating Device Form, and Observer Safety Reporting) and 0648-0335 (Fisheries Certificate of Origin). Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at:

*<https://www.reginfo.gov/public/do/PRAMain>.*

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

#### **List of Subjects in 50 CFR Parts 216 and 300**

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties

Dated: March 22, 2022.

Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, the National Marine Fisheries Service amends 50 CFR parts 216 and 300 as follows:

**PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING  
OF MARINE MAMMALS**

**Subpart C—General Exceptions**

1. The authority citation for part 216, subpart C, continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

2. Amend § 216.24 by adding paragraph (e)(1)(i) and reserved paragraph (e)(1)(ii) to read as follows:

**§ 216.24 Taking and related acts in commercial fishing operations including tuna  
purse seine vessels in the eastern tropical Pacific Ocean.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) *Exemption from observer requirement.* The Administrator, West Coast Region (or designee), may issue a temporary written exemption from the observer requirement in this paragraph (e)(1) if the Parties to the AIDCP and/or Members of the IATTC have adopted emergency observer exemption procedures to address relevant global or regional health, safety, and security concerns, as well as other international emergencies and crises. Such exemptions will be issued on a case-by-case basis for a single fishing trip, in accordance with the AIDCP/IATTC exemption procedures in effect at the time of the request. Exemptions from the requirement in this paragraph (e)(1) will only be issued when AIDCP/IATTC exemption procedures are in effect and are only valid for as long as

the AIDCP/IATTC exemption procedures remain in effect. NMFS will notify the affected fleet via email when existing AIDCP/IATTC exemption procedures expire. NMFS will also notify the affected fleet via email and the public by publication of a document in the **Federal Register** if new exemption procedures are adopted by the Parties to the AIDCP and/or the Members of the IATTC. Requests for exemption must be made to the Administrator, West Coast Region, via email at *WCR.HMS@noaa.gov*, or in a manner acceptable to the Administrator, West Coast Region.

(ii) [Reserved]

\* \* \* \* \*

## **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

### **Subpart C—Eastern Pacific Tuna Fisheries**

3. The authority citation for part 300, subpart C, continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*

4. Amend § 300.24 by revising paragraph (n) to read as follows:

#### **§ 300.24 Prohibitions.**

\* \* \* \* \*

(n) Use a fishing vessel of class size 4-6 to fish with purse seine gear in the Convention Area in contravention of the observer requirements in § 300.25(d) or the purse seine closure period requirements in § 300.25(e)(1), (2), or (5).

\* \* \* \* \*

5. Amend § 300.25 by adding paragraph (d) to read as follows:

#### **§ 300.25 Fisheries management.**

\* \* \* \* \*

(d) *Observer requirements*—(1) *Purse seine vessels*. (i) The holder of an eastern tropical Pacific Ocean vessel permit, as required by § 216.24(b) of this title, must allow an observer duly authorized by the Administrator, West Coast Region, to accompany the

vessel on all fishing trips in the IATTC Convention Area for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions, pursuant to the requirements in § 216.24(e) of this title. A vessel that fails to carry an observer in accordance with these requirements may not engage in fishing operations unless an exemption has been granted from these requirements as provided for in § 216.24(e)(1)(i) of this title.

(ii) [Reserved].

(2) [Reserved].

\* \* \* \* \*

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